

**United States Department of Labor
Employees' Compensation Appeals Board**

C.S., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Batavia, NY, Employer**

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**Docket No. 16-1918
Issued: July 3, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 30, 2016 appellant filed a timely appeal from a September 16, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established a recurrence of a medical condition causally related to his accepted June 16, 2010 employment injury.

¹ Appellant also filed a timely request for oral argument in this case. By order dated April 21, 2017, the Board exercised its discretion and denied appellant's request as oral argument would further delay issuance of a Board decision and not serve a useful purpose. *Order Denying Request for Oral Argument*, Docket No. 16-1918 (issued April 21, 2017).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 17, 2010 appellant, then a 52-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on June 16, 2010 he injured his right shoulder, arm, wrist, and neck while manually closing the door of the shuttle bus he was operating. He returned to light-duty work on June 21, 2010 and accepted modified, full-time work on July 28, 2010. OWCP accepted the claim for right shoulder strain.

On November 25, 2014 appellant filed a claim for a recurrence of disability (Form CA-2a). He did not indicate whether his recurrence was due to a need for further medical treatment or wage loss. Appellant reported that he never lost time, but his shoulder condition and other ongoing conditions were getting worse. He indicated that he worked light duty with restrictions after his original injury.

Evidence submitted in support of the recurrence claim included numerous diagnostic testing reports. Those included x-ray, magnetic resonance imaging (MRI) scans, and arthrogram reports.

A June 17, 2010 x-ray to the right wrist was reported as unremarkable. A June 17, 2010 MRI scan of right elbow noted findings consistent with probable osseous contusion lateral aspects of an olecranon and a small joint effusion.

The June 17, 2010 x-ray, compared to an October 20, 2009 report, was unremarkable with a somewhat widened subacromial space without interval change. A June 17, 2010 cervical spine MRI scan indicated degenerative disc disease at C4-7 with bilateral intervertebral foraminal encroachment. A September 10, 2010 MRI scan indicated borderline impingement supraspinatus muscle by acromioclavicular joint. A type 2 superior labrum anterior and posterior (SLAP) lesion was also identified, which the interpreting radiologist felt was degenerative in nature.

A December 17, 2012 x-ray was reported as normal. A December 17, 2012 cervical MRI scan noted that appellant's spine was unchanged from prior study of June 17, 2010 and that degenerative changes, discogenic disease, bilateral neuroforaminal narrowing, and bilateral facet and uncovertebral degenerative changes were present. A May 14, 2013 MRI scan noted degenerative changes and a minimally displaced avulsion fracture involving the biceps anchor. A July 16, 2013 MRI scan identified type 2 SLAP lesion from the prior May 14, 2013 MRI scan study. However, a July 16, 2013 arthrogram indicated that there were no arthrogenic abnormalities to suggest a tear. A September 12, 2013 MRI scan indicated mild-to-moderate discogenic disease and multilevel neural foraminal narrowing.

Diagnostic testing pertaining to appellant's back was submitted. April 20, 2011 x-ray studies of the lumbar and thoracic spine indicated lumbar spondylosis and mild thoracic spondylosis. An August 1, 2012 x-ray indicated chronic degenerative disc disease and chronic mild degenerative disease of his bilateral sacroiliac joints compared to the April 20, 2011 x-ray report. A February 14, 2014 x-ray study indicated further degenerative changes in comparison to the August 1, 2012 study.

An April 20, 2011 x-ray of appellant's right hip was reported as normal. January 30, 2012 x-rays pertaining to appellant's feet were also submitted, which revealed that his left foot had mild hallux valgus deformity and degenerative joint disease arthritis and his right foot had calcaneal spurs and flexion deformity. Diagnostic testing pertaining to appellant's right knee was also submitted. An August 22, 2012 x-ray noted degenerative changes of the patellofemoral articulation and medial joint space. An August 23, 2012 x-ray noted degenerative joint disease in his medial knee joint.

By letter dated June 19, 2015, OWCP informed appellant that the evidence of record was insufficient to support his recurrence claim. Appellant was advised of the medical and factual evidence needed and was afforded 30 days to submit the necessary evidence. He did not respond and no further evidence was received.

By decision dated October 7, 2015, OWCP denied appellant's recurrence claim. It found that the medical evidence of record did not establish that he required additional medical treatment due to a worsening of his accepted work-related condition, without an intervening cause. OWCP also noted that appellant failed to submit the factual information it had requested.

On June 22, 2016 appellant requested reconsideration of OWCP's decision. Evidence received in support of the reconsideration request included October 31, 2014 x-ray and cervical spine reports pertaining to the left shoulder. No fracture or dislocation or significant degenerative changes were noted on x-ray. Mild degenerative changes of the cervical spine were noted.

In a November 17, 2014 report, a chiropractor diagnosed nonallopathic lesions of appellant's thoracic region, rib cage, and upper extremities, not elsewhere classified along with myofascial pain syndrome -- myalgia and myositis, unspecified.

In a November 18, 2014 report, a licensed clinical social worker, diagnosed impulse control disorder by history.

A January 23, 2015 letter from Veterans Administration Health Care Upstate New York, indicated that appellant was scheduled for right shoulder rotator cuff repair on February 27, 2015. Preoperative assessments and testing were submitted which included December 8, 2014 blood panels and stress tests and a January 6, 2015 myocardial perfusion image study.

In a September 30, 2015 work status note, Dr. Patrick J. Hlubik, an orthopedic surgeon, diagnosed right shoulder SLAP tear. He indicated that appellant was disabled and unable to return to work.

Reports dated July 10, October 27, and November 20 and 24, 2015 pertaining to appellant's emotional conditions, signed by a nurse practitioner, were submitted.

By decision dated September 16, 2016, OWCP affirmed the October 7, 2015 decision. It found that the medical evidence of record failed to support any relationship between appellant's current medical conditions and the need for treatment and the original injury.

LEGAL PRECEDENT

A claimant has the burden of proof to establish that he or she sustained a recurrence of a medical condition causally related to his or her accepted employment injury.³ To meet this burden, appellant must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁴ Where no such rationale is present, the medical evidence is of diminished probative value.⁵

OWCP regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage.⁶ Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.⁷

OWCP's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.⁸

In order to establish that a claimant's alleged recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his or her present condition and the accepted injury must support the physician's conclusion of causal relationship.⁹ It is the claimant's burden to provide rationalized medical evidence sufficient to establish a causal relationship for conditions not accepted by OWCP as being employment related, not OWCP's burden to disprove such relationship.¹⁰

³ See *E.C.*, Docket No. 16-0413 (issued June 20, 2016).

⁴ *Ronald A. Eldridge*, 53 ECAB 218, 220 (2001).

⁵ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Albert C. Brown*, 52 ECAB 152, 155 (2000).

⁶ 20 C.F.R. § 10.5(y).

⁷ *Id.*

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013). The procedure manual provides, with certain exceptions, that within 90 days of release from medical care (as stated by the physician or computed from the date of last examination or the physician's instruction to return PRN), a claims examiner may accept the attending physician's statement supporting causal relationship between appellants current condition and the accepted condition, even if the statement contains no rationale. *Id.* at Chapter 2.1500.4(a).

⁹ *Mary A. Ceglia*, *supra* note 5.

¹⁰ *G.A.*, Docket No. 09-2153 (issued June 10, 2010); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Alice J. Tysinger*, 51 ECAB 638 (2000).

ANALYSIS

OWCP accepted appellant's claim for right shoulder sprain, which occurred on June 16, 2010. Appellant returned to limited duty following his injury. On November 25, 2014 he filed a claim for a recurrence of disability. Appellant asserted that his cardiac condition, emotional stress, and other conditions were all causally related to his June 16, 2010 employment injury. The Board agrees.

The Board finds that appellant has not met his burden of proof to establish that his current conditions are due to his accepted work-related injury and require further medical treatment.¹¹ It is appellant's burden to provide rationalized medical evidence sufficient to establish a causal relationship, not OWCP's burden to disprove such relationship.¹²

The medical evidence received in support of appellant's claim for a recurrence of his right shoulder condition was the September 30, 2015 work status note from Dr. Hlubik, which diagnosed a right shoulder SLAP tear. However, Dr. Hlubik did not offer an opinion regarding the cause of appellant's right shoulder SLAP tear. Without any mention of the accepted June 16, 2010 work incident or a discussion of causal relationship, Dr. Hlubik's report is of limited probative value.¹³ Thus, Dr. Hlubik's opinion is insufficient to establish appellant's claim for a recurrence.

The Board notes that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴ The diagnostic studies, including the September 10, 2010 and July 16, 2013 MRI scans, which identified a type 2 superior SLAP lesion, do not address the issue of causal relationship.¹⁵ Accordingly, the medical evidence submitted is insufficient to establish causal relationship between appellant's current medical condition and the accepted employment incident.

Appellant also submitted evidence pertaining to cardiac, back, feet, left shoulder, right wrist, right elbow, right hip, chest, and emotional stress conditions. OWCP only accepted a right shoulder condition. For conditions not accepted or approved by OWCP as being due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹⁶

¹¹ 20 C.F.R. §10.5(y); *M.O.*, Docket No. 16-1242 (issued November 28, 2016).

¹² *Mary A. Ceglia*, *supra* note 5.

¹³ *S.Y.*, Docket No. 11-1816 (issued March 16, 2012).

¹⁴ *F.T.*, Docket No. 15-1109 (issued June 17, 2016).

¹⁵ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

¹⁶ *See T.M.*, Docket No. 08-0975 (issued February 6, 2009).

The reports pertaining to appellant's emotional/stress condition are from a licensed clinical social worker and nurse practitioners. These reports are insufficient to establish his claim as they are not signed by a physician. Registered nurses, physical therapists, social workers, and physician assistants are not considered physicians as defined under FECA. Therefore, their opinions are of diminished probative value.¹⁷

The chiropractic report of November 17, 2014 report is of no probative value because the chiropractor did not specifically diagnose a subluxation of the spine from x-ray, and, therefore, is not considered a physician under FECA.¹⁸

The diagnostic reports appellant submitted pertaining to his cardiac, back, feet, left shoulder, right wrist and elbow, right hip, and chest conditions do not address causal relationship. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁹ Therefore, these diagnostic reports also fail to establish causal relationship and appellant's recurrence claim.

On appeal appellant alleges that OWCP's decision is incorrect as he believes that his various medical conditions all tie into his accepted employment injury. As found above, none of the medical evidence submitted contains any discussion or rationale explaining how he sustained a recurrence of a medical condition causally related to his accepted right shoulder sprain or how the additional conditions had been caused or aggravated by the accepted June 16, 2010 employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a recurrence of a medical condition causally related to his accepted employment injury.

¹⁷ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005); *C.P.*, Docket No. 17-0042 (issued December 27, 2016) (social workers are not considered physicians as defined under FECA).

¹⁸ *A.O.*, Docket No. 08-0580 (issued January 28, 2009). Under section 8101(2) of FECA, the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(2); *see D.S.*, Docket No. 09-0860 (issued November 2, 2009).

¹⁹ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007); *Jaja K. Asaramo*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board